

February 2006

MJI Publications Updates, Part 2 of 2

Domestic Violence Benchbook (3rd ed)

Friend of the Court Domestic Violence Resource Book (Revised Edition)

Juvenile Justice Benchbook (Revised Edition)

Juvenile Traffic Benchbook (Revised Edition)

Michigan Circuit Court Benchbook

Sexual Assault Benchbook

Traffic Benchbook—Third Edition, Volume 2

Traffic Benchbook—Third Edition, Volume 3

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 12

Domestic Violence and Access to Children

12.5 Modifying Michigan Custody Determinations

A. Standard for Modification

Effective December 28, 2005, 2005 PA 328 amended MCL 722.27(1)(c), precluding a change of custody when a parent is on active military duty. At the top of page 502, replace the quotation of MCL 722.27(1)(c) with the following:

“(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b,* until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child’s placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order

*The referenced statute addresses post-majority child support.

if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in the best interest of the child determination."

Note: Effective December 28, 2005, 2005 PA 327 amended MCL 722.22 to define "active military duty" to be "when a reserve unit member or national guard unit member is called into active military duty." MCL 722.22(a).

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 4

Custody and Parenting Time

4.9 Modifying Michigan Custody Determinations

A. Standard for Modification

Effective December 28, 2005, 2005 PA 328 amended MCL 722.27(1)(c), precluding a change of custody when a parent is on active military duty. At the bottom of page 119, and continuing to the top of page 120, replace the quotation of MCL 722.27(1)(c) with the following:

“(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b,* until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed during the time a parent is in active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child’s placement that existed on the date the parent was called to active military duty, except the court may enter a temporary custody order

*The referenced statute addresses post-majority child support.

if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in the best interest of the child determination."

Note: Effective December 28, 2005, 2005 PA 327 amended MCL 722.22 to define "active military duty" to be "when a reserve unit member or national guard unit member is called into active military duty." MCL 722.22(a).

February 2006

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 10

Juvenile Dispositions

10.13 Restitution

P. Payment of Restitution When Juvenile Is Placed in a Juvenile Facility or Sentenced to Jail or the Department of Corrections

At the end of the January 2006 update to page 249, add the following:

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k, which allows a court to impose and collect fines, costs, assessments, and fees. Also effective January 1, 2006, 2005 PA 325 added MCL 769.1l, which requires the Department of Corrections to deduct money from a prisoner's account to pay such fines, costs, assessments, and fees in the same manner as money is deducted to pay restitution. However, orders of restitution pursuant to MCL 791.220h or the crime victim's rights act are to receive priority over the orders described in MCL 769.1l. MCL 769.1l.

CHAPTER 10

Juvenile Dispositions

10.14 Crime Victim's Rights Fund Assessment

A. Assessments of Convicted and Adjudicated Offenders

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905(1). On page 254, replace the first sentence with the following:

The court must order a “crime victim’s rights fund assessment” against “each person charged with an offense that is a felony, a serious misdemeanor, or a specified misdemeanor, that is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal” as follows:

CHAPTER 11

Paying the Costs of Juvenile Proceedings

11.7 Orders for Reimbursement of Attorney Fees

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k. After the first sentence of the partial paragraph at the bottom of page 277, insert the following sentence:

MCL 769.1k(1)(b)(iii) allows a court to impose upon a criminal defendant “[t]he expenses of providing legal assistance to the defendant.”

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

A. Who Must Register?

“Listed Offense.”

Effective February 1, 2006, 2005 PA 301 amended MCL 28.722, expanding the definition of “listed offenses.” Near the top of page 522, add the following bullet after the existing fourth bullet:

- indecent exposure, MCL 750.335a(2)(b), if the individual was previously convicted of violating MCL 750.335a.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

Yearly verification (“misdemeanor listed offenses”).

Effective January 1, 2006, 2005 PA 322 redefined “misdemeanor listed offenses.” Beginning near the top of page 532 and continuing to the end of that page, replace the text and bullets with the following sentence:

Under MCL 28.725a(4)(a), misdemeanor is defined as that term is defined in MCL 761.1.

Quarterly verification (“felony listed offenses”).

Effective January 1, 2006, 2005 PA 322 also redefined “felony listed offenses.” Beginning near the middle of page 533 and continuing to the top of page 534, replace the text and bullets with the following:

Under MCL 28.725a(4)(b), felony is defined as that term is defined in MCL 761.1.

Update: Juvenile Traffic Benchbook (Revised Edition)

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.9 Section 625(1) and (8) Offenses—OWI

C. Licensing and Vehicle Sanctions

3. Offenders Who Violate §625(1) or (8) Within Ten Years of Two or More Prior Convictions

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph beginning at the bottom of page 100 and continuing on page 101 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.10 Operating While Visibly Impaired (OWVI)—§625(3)

C. Licensing and Vehicle Sanctions

3. Repeat Offenders—Violation Within Ten Years of Two or More Prior Convictions

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the second paragraph following the bulleted list on page 108 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver’s license of the vehicle’s owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.11 “Zero Tolerance” Violations—§625(6)

C. Licensing Sanctions

4. Offenders Who Violate §625(6) Within Ten Years of Two or More Prior Convictions*

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the paragraph following the bulleted list on page 114 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver’s license of the vehicle’s owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

*Incorrectly numbered “3” on page 113.

Update: Michigan Circuit Court Benchbook

CHAPTER 2

Evidence

Part III—Witnesses, Opinions, and Expert Testimony (MRE Articles VI and VII)

2.35 Medical Malpractice—Expert Testimony

B. Standard of Care

Immediately before subsection (C) on page 97, insert the following case summary:

In *McElhaney v Harper-Hutzel Hosp*, ___ Mich App ___ (2006), the Court of Appeals affirmed the grant of summary disposition in favor of defendant based on plaintiff's failure to establish a genuine issue of material fact regarding the standard of care applicable to a nurse midwife. In support of this medical malpractice action, plaintiff submitted an affidavit of merit by two obstetricians/gynecologists. The Court noted that "[f]or an expert to be qualified to testify regarding the standard of care, the expert must be qualified under MCL 600.2169(1). In this instance, plaintiff's experts, as obstetricians/gynecologists, did not qualify to testify regarding the standard of care applicable to defendant's nurse midwife because they did not practice in "the same health profession" as the nurse midwife. The Court ruled that "because nurse midwives are separately licensed professionals who practice nursing with specialty certification in the practice of nurse midwifery, obstetricians/gynecologists may not testify about their standard of practice or care."

CHAPTER 3

Civil Proceedings

Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200)

3.24 Summary Disposition

B. Timing

On December 29, 2005, the Court of Appeals approved *Kemerko Clawson LLC v RXIV Inc* for publication. In the November 2005 update to page 175, replace the citation after the first sentence with the following citation:

Kemerko Clawson LLC v RXIV Inc, ___ Mich App ___, ___ (2005).

CHAPTER 4

Criminal Proceedings

Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

4.21 Search and Seizure Issues

G. Is Exclusion the Remedy if a Violation Is Found?

1. Good-Faith Exception

Insert the following text after the December 2005 update to page 348:

Even where a search warrant is based in part on tainted evidence obtained as a result of an officer's Fourth Amendment violation—"fruit of the poisonous tree"—the good-faith exception to the exclusionary rule may apply to evidence seized pursuant to the warrant if "an objectively reasonable officer could have believed the seizure valid." *United States v McClain*, 430 F3d 299, 308 (CA 6, 2005), quoting *United States v White*, 890 F2d 1413, 1419 (CA 8, 1989).

CHAPTER 4

Criminal Proceedings

Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

4.22 Automobile Searches

D. Searching a Container Located in an Automobile

Insert the following text on page 351 immediately before subsection (E):

In the context of automobile searches, a computer may be considered a container of the data stored in the computer's memory. *People v Dagwan*, ____ Mich App ____, ____ (2005).

CHAPTER 4

Criminal Proceedings

Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

4.54 Sentencing—Felony

D. Imposition of Sentence

8. Fines and Costs

Effective January 1, 2006, 2005 PA 316 amended the Code of Criminal Procedure to add MCL 769.1k. Insert the following text on page 453 after the existing paragraph:

MCL 769.1k provides a general statutory basis for a court's authority to impose specified monetary penalties when sentencing a defendant and to collect the amounts owed at any time. MCL 769.1k states:

“(1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

“(a) The court shall impose the minimum state costs as set forth in [MCL 769.1j].

“(b) The court may impose any or all of the following:

“(i) Any fine.

“(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

“(iii) The expenses of providing legal assistance to the defendant.

“(iv) Any assessment authorized by law.

“(v) Reimbursement under [MCL 769.1f].

“(2) Subsection (1) applies regardless of whether the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation.

“(3) The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment.

“(4) The court may provide for the amounts imposed under this section to be collected at any time.”

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

E. Pertinent Case Law

4. Definition of Terms

Insert the following case summary after the first paragraph on page 136:

A person “produces” or “makes” child sexually abusive material when the person reproduces prohibited images by copying them to a recordable compact disc (CD-R). *People v Hill*, ___ Mich App ___, ___ (2006). In *Hill*, the defendant argued that he was improperly charged with violating MCL 750.145c(2) because he merely possessed child sexually abusive material. The defendant asserted that his conduct of copying images he had downloaded from an internet website onto CD-Rs was not the equivalent of producing child sexually abusive material; instead, the defendant argued that his copies on CD-Rs represented only the storage of child sexually abusive material. *Hill, supra* at ___. The circuit court disagreed and bound the defendant over on charges that he violated MCL 750.145c(2).

The Court of Appeals affirmed the circuit court’s conclusion that “following the mechanical and technical act of burning images onto the CD-Rs, something new was created or made that did not previously exist” so that the defendant was properly charged with violating MCL 750.145c(2). *Hill, supra* at ___. The Court of Appeals noted that MCL 750.145c(1)(m) specifically defines “child sexually abusive material” as “any reproduction, copy, or print of [a prohibited] photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.” *Hill, supra* at ___. According to the *Hill* Court, notwithstanding the plain language of the statute that criminalizes the defendant’s conduct,

“[t]he evidence reflects that defendant burned the illegal images and videos onto the CD-Rs, thereby placing child sexually abusive material on new storage devices, the CD-Rs, which material was compiled in a format and manner determined solely by defendant, considering that he personally burned and spliced particular picture and video files onto particular CD-Rs. The CD-Rs, as compiled by defendant, were defendant’s own creations; he made child-pornography CD-Rs.” *Hill, supra* at ____.

CHAPTER 3

Other Related Offenses

3.10 Disorderly Person (Common Prostitute/Window Peeper/Indecent or Obscene Conduct)

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of “listed offenses” in MCL 28.722(e). On page 143, change the citation in the second dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a “listed offense” under SORA. MCL 28.722(e)(iii).

Note: MCL 750.335a(2)(b) is a new violation added by 2005 PA 300, effective February 1, 2006. MCL 750.335a(2)(b) states: “If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.”

CHAPTER 3

Other Related Offenses

3.11 Dissemination of Sexually Explicit Matter to Minors

A. Statutory Authority—Disseminating and Exhibiting

2. Statutory Exceptions

Effective February 1, 2006, 2005 PA 245 amended MCL 722.676(a) to qualify the exception for parents or guardians. Replace (a) in the quotation of MCL 722.676 near the bottom of the first page of the January 2004 update to page 144 with the following:

“(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward unless the dissemination is for the sexual gratification of the parent or guardian.”

CHAPTER 3

Other Related Offenses

3.16 Indecent Exposure

A. Statutory Authority and Penalties

Effective February 1, 2006, 2005 PA 300 amended MCL 750.335a, the statute defining the crime of indecent exposure. Replace the content of the March 2003 update to page 160 with the following text:

MCL 750.335a prohibits a person from knowingly making an open or indecent exposure of himself or herself or of another person. Specifically, MCL 750.335a states:

“(1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.

“(2) A person who violates subsection (1) is guilty of a crime, as follows:

“(a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

“(b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

“(c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.”

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of “listed offenses” in MCL 28.722(e). On page 161, change the citation in the first dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a “listed offense” under SORA. MCL 28.722(e)(iii).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

A. Who Must Register?

2. “Listed Offense”

Beginning on page 515, replace the content of this sub-subsection with the following text:

A “listed offense” means any of the offenses found in MCL 28.722(e)(i)–(xiv):*

- ♦ Accosting, enticing or soliciting a child for immoral purposes, MCL 750.145a.
- ♦ Accosting, enticing or soliciting a child for immoral purposes, second offense, MCL 750.145b.
- ♦ Child sexually abusive activity, MCL 750.145c.
- ♦ Crimes against nature or sodomy, if a victim is an individual less than 18 years of age, MCL 750.158.
- ♦ Indecent exposure when an individual is fondling his or her genitals, pubic area, buttocks, or, if the person is female, breast, if that individual was previously convicted of indecent exposure, MCL 750.335a(2)(b).*
- ♦ A third or subsequent violation of any combination of the following:
 - Disorderly person (indecent or obscene conduct), MCL 750.167(1)(f), or a local ordinance of a municipality substantially corresponding to MCL 750.167(1)(f).
 - Indecent exposure, MCL 750.335a(2)(a), or a local ordinance of a municipality substantially corresponding to MCL 750.335a(2)(a).
- ♦ Except for a juvenile disposition or adjudication, gross indecency between males if a victim is an individual less than 18 years of age, MCL 750.338.
- ♦ Except for a juvenile disposition or adjudication, gross indecency between females if a victim is less than 18 years of age, MCL 750.338a.

*As amended, effective February 1, 2006. 2005 PA 301.

*Effective February 1, 2006.

- ♦ Except for a juvenile disposition or adjudication, gross indecency between males and females if a victim is less than 18 years of age, MCL 750.338b.
- ♦ Kidnapping, MCL 750.349, if a victim is less than 18 years of age.
- ♦ Kidnapping child under the age of 14, MCL 750.350.
- ♦ Soliciting and accosting, MCL 750.448, if a victim is less than 18 years of age.
- ♦ Pandering, MCL 750.455.
- ♦ First-degree criminal sexual conduct, MCL 750.520b.
- ♦ Second-degree criminal sexual conduct, MCL 750.520c.
- ♦ Third-degree criminal sexual conduct, MCL 750.520d.
- ♦ Fourth-degree criminal sexual conduct, MCL 750.520e.
- ♦ Assault with intent to commit criminal sexual conduct, MCL 750.520g.
- ♦ Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.

Note: The elements of this “catch-all” provision are: (1) the defendant must have been convicted of a state law violation or a municipal ordinance violation; (2) the state law or municipal ordinance violation must, “by its nature,” constitute a “sexual offense”; and (3) the victim of the state law or municipal ordinance violation must be under 18. See *People v Meyers*, 250 Mich App 637, 655 (2002) (defendant’s conviction under MCL 750.145d(1)(b) for using the internet to communicate with a person for the purpose of attempting to commit conduct proscribed under MCL 750.145a, satisfied the foregoing “catch-all” elements and required him to register under SORA, even though his exact conviction was not a “listed offense”).

- ♦ An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in MCL 750.10a.
- ♦ An attempt or conspiracy to commit an offense described above.

Note: In *Meyers, supra*, the Court of Appeals held that the defendant was required to register under the foregoing provision even though his exact conviction under MCL 750.145d(1)(b) was not a “listed offense,” because he used the internet to communicate with a person for the purpose

of *attempting* to commit conduct proscribed by MCL 750.145a (accosting, enticing, or soliciting a child), which is a “listed offense” under SORA.

- ♦ An offense substantially similar to an offense described above under a law of the United States, any state, or any country or under tribal or military law.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

1. Yearly Verification (Misdemeanor Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(a) and eliminated the list of misdemeanor listed offenses found in MCL 28.725a(4)(a). Delete sub-subsection (1) in the October 2002 update to page 522. Near the bottom of page 522, change the title of sub-subsection (1) as indicated above and beginning with the paragraph at the bottom of page 522 and continuing on page 523, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are misdemeanors must verify his or her domicile or residence yearly in person, no earlier than January 1 and no later than January 15, at the local law enforcement agency, sheriff's department, or State Police post. MCL 28.725a(4)(a).

Under MCL 28.725a(4)(a), “‘misdemeanor’ means that term as defined in . . . MCL 761.1.”

Note: MCL 761.1(h) defines “misdemeanor” as “a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.”

2. Quarterly Verification (Felony Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(b) and eliminated the list of felony listed offenses found in MCL 28.725a(4)(b). Delete sub-subsection (2) in the October 2002 update to page 522. On page 523, change the title of sub-subsection (2) as indicated above and beginning with the first paragraph on page 523 and continuing on page 524, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are felonies must verify his or her domicile or residence quarterly in person, no earlier than the first day and no later than the fifteenth day of each April, July, October, and January, at the local law enforcement agency, sheriff's department, or State Police Post. MCL 28.725a(4)(b).

Under MCL 28.725a(4)(b), “‘felony’ means that term as defined in . . . MCL 761.1.”

Note: MCL 761.1(g) defines “felony” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.”

Update: Traffic Benchbook— Third Edition, Volume 2

CHAPTER 5

Snowmobiles

Part B—Traffic Offenses in the Snowmobile Act

5.13 Operation of Snowmobiles on Public Highways and Streets

A. Statute

Effective December 27, 2005, 2005 PA 307 made significant changes to MCL 324.82119. Replace the existing content of this subsection, beginning at the bottom of page 239 and continuing to the middle of page 241, with the following text:

MCL 324.82119 states in part:

“(1) A person shall not operate a snowmobile upon a public highway, land used as an airport or street, or on a public or private parking lot not specifically designated for the use of snowmobiles except under the following conditions and circumstances:

“(a) Subject to subsection (2), a snowmobile may be operated on the right-of-way of a public highway, except a limited access highway, if it is operated at the extreme right of the open portion of the right-of-way and with the flow of traffic on the highway. However, a snowmobile may be operated on the right-of-way of a public highway against the flow of traffic if the right-of-way is a snowmobile trail that is designated by the department in the plan developed pursuant to section 82106(2) and that is approved by the state transportation department. Snowmobiles operated on the right-of-way of a public highway, as provided in this subdivision, shall travel single

file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall not exceed the speed limit posted on the public highway.

“(b) Subject to subsection (2), a snowmobile may be operated on the right-of-way of a limited access public highway if it is operated on a snowmobile trail that is designated by the department in the plan developed pursuant to section 82106(2) and that is approved by the state transportation department. A snowmobile shall only be operated on that right-of-way in the manner provided in that plan. In addition, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall not exceed the speed limit posted on the public highway.

“(c) A snowmobile may be operated on the roadway or shoulder when necessary to cross a bridge or culvert if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right-of-way to an approaching vehicle on the highway.

* * *

“(e) A snowmobile may be operated across a public highway other than a limited access highway, at right angles to the highway, for the purpose of getting from 1 area to another when the operation can be done in safety and another vehicle is not crossing the highway at the same time in the same general area. An operator shall bring his or her snowmobile to a complete stop before proceeding across the public highway and shall yield the right-of-way to all oncoming traffic.

“(f) Snowmobiles may be operated on a highway in a county road system that is not normally snowplowed for vehicular traffic and on the plowed right-of-way or shoulder when no right-of-way exists on a snowplowed highway in the county road system, outside the corporate limits of a city or village, that is designated and marked for snowmobile use by the county road commission having

jurisdiction. Upon the request of a county road commission that has designated all county roads outside the corporate limits of a city or village for snowmobile use, the state transportation department shall erect at county road commission expense and shall maintain, in accordance with the Michigan manual of uniform traffic control devices standards, the basic snowmobile sign unit together with a supplemental panel stating ‘permitted on right-of-way or shoulder of all (county name) roads--MCL 324.82119’ at the county line on all state trunk line highways and county roads. A sign erected before the effective date of the 2005 amendatory act that amended this section may cite 1968 PA 74 instead of citing this section.

“(g) A law enforcement officer of a local unit of government or the state may authorize use of a snowmobile on a public highway or street within his or her jurisdiction when an emergency occurs and conventional motor vehicles cannot be used for transportation due to snow or other extreme highway conditions.

“(h) A snowmobile may be operated on a highway or street for a special event of limited duration conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. The event may be conducted on the frozen surface of public waters only under permit from the department.

“(i) A city or village by ordinance may designate 1 or more specific public highways or streets within its jurisdiction as egress and ingress routes for the use of snowmobiles. A city or village acting under the authority of this subdivision shall erect and maintain, in accordance with the Michigan manual of uniform traffic control devices standards, a sign unit giving proper notice of the designation.” MCL 324.82119(1)(a)–(c) and (e)–(i).

Note: MCL 324.82119(2)* details the method by which the Department of Natural Resources may permanently prohibit snowmobile use in a particular area if, within ten years of December 27, 2005, the specific requirements outlined in MCL 324.82119(2)(a)–(e) are met.

*MCL 324.82119(2) is a new provision, effective December 27, 2005.

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 1

Introduction to Vehicle Code §625 and §904

1.2 Highlights of Recent Legislation

I. Registration Denial

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the introductory paragraph and the first bullet near the middle of page 7 with the following text:

The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for one of the following offenses:

- A third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.11 Vehicle Sanctions

C. Registration Denial

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the introductory paragraph and the first bullet at the top of page 104 with the following text:

The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for one of the following offenses:

- A third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

Also, eliminate the citation to MCL 257.219(2)(d) following the second bullet on page 104.

CHAPTER 3

Section 625 Offenses

3.1 Operating While Impaired (OWI)—§625(1)

D. Penalties

3. Third or Subsequent Offense

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph on page 121 with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 3

Section 625 Offenses

3.3 Operating While Visibly Impaired (OWVI)—§625(3)

C. Penalties

3. Third or Subsequent Offense

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph on page 129 with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 3

Section 625 Offenses

3.4 OWI or OWVI Causing Death of Another—§625(4)

D. Penalties

3. Second or Subsequent Offense

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph on page 135 with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 3

Section 625 Offenses

3.5 OWI or OWVI Causing Serious Impairment of a Body Function—§625(5)

C. Penalties

3. Second or Subsequent Offense

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph on page 139 with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 3

Section 625 Offenses

3.7 Child Endangerment—§625(7)

C. Penalties

3. Vehicle Sanctions

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Beginning at the bottom of page 146 and continuing on page 147, replace the existing paragraph with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 3

Section 625 Offenses

3.8 Operating With the Presence of Drugs—§625(8)

C. Penalties

3. Third or Subsequent Offense

Registration Denial—

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph on page 151 with the following text:

Registration Denial—The Secretary of State shall refuse issuance of a registration or a transfer of registration if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m.

CHAPTER 5

Violations of Vehicle Sanctions

5.4 Obtaining or Transferring a Vehicle to Circumvent Vehicle or License Sanctions—§233

A. Unlawful Acquisition of a Vehicle

Effective December 27, 2005, 2005 PA 317 amended MCL 257.233(6). Near the middle of page 170, replace the quoted paragraph below the second bullet with the following text:

“A person whose operator’s or chauffeur’s license is suspended, revoked, or denied for, or who has never been licensed by this state and was convicted for, a third or subsequent violation of section 625 or 625m, of a local ordinance substantially corresponding to section 625 or 625m, or of a law of another state substantially corresponding to section 625 or 625m, or for a fourth or subsequent suspension or revocation under section 904 shall not purchase, lease, or otherwise acquire a motor vehicle during the suspension, revocation, or denial period. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.”